

JEFFREY W. APPEL (3630)
BENJAMIN T. WILSON (5823)
COLLARD, APPEL & WARLAUMONT
1100 Boston Building
9 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801)532-1252

Attorneys for Castle Valley
Special Service District

FILED

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SECRETARY, BOARD OF
OIL, GAS & MINING

BEFORE THE BOARD OF OIL, GAS AND MINING

DEPARTMENT OF NATURAL RESOURCES, STATE OF UTAH

IN THE MATTER OF THE REQUEST)	CVSSD, NEWUA AND HCIC'S
FOR AGENCY ACTION AND APPEAL)	REPLY TO CO-OP'S OPPOSITION
OF DIVISION DETERMINATION)	TO REQUEST FOR RE-HEARING
TO APPROVE SIGNIFICANT)	AND MODIFICATION OF ORDER
REVISION TO PERMIT TO ALLOW)	
MINING OF TANK SEAM BY CO-OP)	
MINING COMPANY BY PETITIONERS)	
NORTH EMERY WATER USERS)	
ASSOCIATION, HUNTINGTON-)	
CLEVELAND IRRIGATION COMPANY,)	Docket No. 94-027
AND CASTLE VALLEY SPECIAL)	
SERVICE DISTRICT, CARBON)	Cause No. ACT/015/025-93B
COUNTY, UTAH.)	
)	

Castle Valley Special Service District, North Emery Water Users Association and Huntington-Cleveland Irrigation Company hereby jointly reply to Co-Op's opposition to the Request for Re-hearing and Modification of the Order Dated June 13, 1995, by the Utah Board of Oil, Gas and Mining.

ARGUMENT

Despite having repeatedly argued that Petitioners' evidence concerning the contextual relationship of the regional stratigraphy and stratigraphy of the lower mine area of Co-Op to the proceeding

was irrelevant, unnecessary, and presented in bad faith, Co-Op now states that evidence ruled irrelevant by the Board and issues never properly before the agency must remain in the Findings, Conclusions and Order. Such cannot be the case.

Co-Op has ignored the fact that the Chairman of the Board of Oil, Gas, and Mining took the issue concerning the relevance of that evidence under advisement and later ruled that it was irrelevant. It is axiomatic that the Board cannot rule certain evidence irrelevant and then make it a part of the Findings, Conclusions and Order. If evidence is ruled irrelevant then it is not evidence of record and may not be relied upon. What has occurred (absent modification of the Order per Petitioners' request) is that the Board refused to consider evidence, ruled it irrelevant and then relied upon it. That error is compounded by the fact that a review of the record and applicable notices demonstrates that the issue concerning the impact of the lower operations of Co-Op on the springs of Petitioners was not at issue in this hearing, and thus not properly before the agency.

Co-Op has suggested that those particular issues were tried with the consent of Petitioners. That is untrue. A review of the transcript reveals that the presentation of that evidence was completely controlled by the Chairman from the outset and hampered by the repeated and continuous objections throughout the hearing by counsel for Co-Op and counsel for the DOGM. In fact, both counsel for Petitioners agreed to the limited scope of the hearing. There is no question that Petitioners have not had their "day in court"

on those issues and on that basis alone the requested portions of the Findings of Fact, Conclusions of Law and Order must be stricken. Otherwise, Petitioners will be forced to take judicial appeal.


Co-Op contends R645-300-100 and R645-300-200 provide the procedures for public participation in the permitting process before the Division of Oil, Gas and Mining and the Board of Oil, Gas and Mining. However, Co-Op claims that "[o]nce the Board issues its written findings of fact, conclusions of law and order under R645-300-212.400" there is no provision allowing further administrative review and that the next step is an appeal not rehearing. Co-Op fails to note that R645-300-212.300 cross-references and incorporates the R641 Rules, Rules of Practice and Procedure before the Board of Oil, Gas and Mining. Utah Admin. Code § R645-300-212.300 (1995). The R641 Rules govern formal adjudicative proceedings before the Board of Oil, Gas and Mining. Utah Admin. Code § R641-100-100. R641-110 provides for the "Rehearing and Modification of Existing Orders," and pursuant to R641-110 any affected party may obtain a rehearing and modification of the order by filing a petition setting forth the particulars in which "the Board's order or decision is unlawful, unreasonable, or unfair." Therefore, Castle Valley is entitled to seek a rehearing and modification pursuant to the rules of the Utah Board of Oil, Gas, and Mining.

Since Co-Op has ignored the participation of North Emery Water Users Association and Huntington-Cleveland Irrigation Company

in its prior filing, it is important to note that this request for re-hearing and modification is filed by all Petitioners as was indicated in the original request.

WHEREFORE, Petitioners request the relief set forth in their Request for Re-hearing and Modification filed on July 10, 1995.

Respectfully submitted this 25th day of July, 1995.



Jeffrey W. Appel
Benjamin T. Wilson
Attorneys for Castle Valley Special
Service District
NIELSEN & SENIOR
J. Craig Smith
David B. Hartvigsen
Attorneys for North Emery Water Users
Association and Huntington-
Cleveland Irrigation Company

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of July, 1995, I caused a true and correct copy of the foregoing Reply to be mailed, postage prepaid, to the following:

Carl E. Kingston, Esq.
3212 South State Street
Salt Lake City, Utah 84115

F. Mark Hansen, Esq.
341 South Main, Suite 406
Salt Lake City, Utah 84111

Thomas A. Mitchell, Esq.
Assistant Attorney General
3 Triad Center, #350
Salt Lake City, Utah 84180

J. Craig Smith
NIELSEN & SENIOR
60 East South Temple, #1100
Salt Lake City, Utah 84111

Wendy S. Nye